4338

BILL NO. S-78-12-18

SPECIAL ORDINANCE NO. S-13-79

AN ORDINANCE approving an Agreement with Marlin R. Jones and G. Michael Axson for construction of a sanitary sewer.

BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:

SECTION 1. That the Agreement dated November 22, 1978, between the City of Fort Wayne, by and through its Mayor and the Board of Public Works and Marlin R. Jones and G. Michael Axson, for:

SANITARY SEWER

Beginning at an existing manhole located at the Northwest corner of Lot #11 of the Villas of the Marketplace, St. Joseph Township, Allen County, Indiana; thence Westerly 130± feet to a proposed manhole #2; thence West 420± feet to and terminating at a proposed manhole #3 located 175± feet East and 15± feet South of the intersection of Terry Land and St. Joe Road,

of which the developer shall pay the entire cost and expense of the construction of said sewer, all as more particularly set forth in said agreement which is on file in the Office of the Board of Public Works and is by reference incorporated herein, made a part hereof and is hereby in all things ratified, confirmed and approved.

SECTION 2. That this Ordinance shall be effective upon passage and approval by the Mayor.

Councilman

APPROVED AS TO FORM
AND LEGALITY,

CITY ATTORNEY

Read the first time in full and on motion by Burns, seconded by Hinga, and duly adopted, read the second time by title and referred to the Committee on City Utilities (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Council Chamber, City-County Building, Fort Wayne, Indiana, on _____, the _____ day of _____, 19__, at _____ o'clock ____ M.,E.S.T.

DATE: 12-12-78

Charles W. Westerman
CITY CLERK

Read the third time in full and on motion by Burns, seconded by Talarico, and duly adopted, placed on its passage.

PASSED (~~LOST~~) by the following vote:

	AYES	NAYS	ABSTAINED	ABSENT	TO-WIT:
TOTAL VOTES	8	0		1	
BURNS	X				
HINGA	X				
HUNTER	X				
MOSES	X				
NUCKOLS	X				
SCHMIDT, D.				X	
SCHMIDT, V.	X				
STIER	X				
TALARICO	X				

DATE: 1-9-79

Charles W. Westerman
CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (ZONING MAP) (GENERAL) (~~ANNEXATION~~) (SPECIAL) (~~APPROPRIATION~~) ORDINANCE (~~RESOLUTION~~) No. 2-13-79 on the 9th day of January, 1979

ATTEST: (SEAL)

Charles W. Westerman
CITY CLERK

Winfield C. Moses Jr.
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 10th day of January, 1979 at the hour of 11:30 o'clock A.M.,E.S.T.

Charles W. Westerman
CITY CLERK

Approved and signed by me this 12th day of January, 1979, at the hour of 2:00 o'clock P.M.,E.S.T.

Robert E. Armstrong
MAYOR

Bill No. S-78-12-18

REPORT OF THE COMMITTEE ON CITY UTILITIES

We, your Committee on City Utilities to whom was referred an Ordinance approving an Agreement with Marlin R. Jones aNd G. Michael Axson for construction of a sanitary sewer

have had said Ordinance under consideration and beg leave to report back to the Common Council that said Ordinance DO PASS.

PAUL M. BURNS - CHAIRMAN

JAMES S. STIER - VICE CHAIRMAN

VIVIAN G. SCHMIDT

WINFIELD C. MOSES, JR.

FREDRICK R. HUNTER

1-9-79
DATE

CHARLES W. WESTERMAN, CITY C

66-252-12 H.I.
11-22-78

A G R E E M E N T

F O R

S E W E R E X T E N S I O N

THIS AGREEMENT, made in triplicate this 22 day of November, 19 78 by and between MARLIN R. JONES and G. MICHAEL AXSON, doing business as MARLIN R. JONES and G. MICHAEL AXSON, an Indiana General Partnership, being all of the partners, hereinafter called "Developers", and the CITY OF FORT WAYNE, INDIANA, an Indiana Municipal Corporation, hereinafter called the "City",

W I T N E S S E T H:

WHEREAS, the Developer desires to construct a sanitary sewer (local sewer) described as follows:

> Beginning at an existing manhole located at the Northwest corner of Lot #11 of the Villas of the Marketplace, St. Joseph Township, Allen County, Indiana; thence Westerly 130± feet to a proposed manhole #2; thence West 420± feet to and terminating at a proposed manhole #3 located 175± feet East and 15± feet South of the intersection of Terry Lane and St. Joe Road.

in accordance with plans, specifications, and profiles heretofore submitted to the City and now on file in the office of the Chief Engineer of the Water Pollution Control Utilities of the City, and known as TERRY LAND-ROUSSEAU SANITARY SEWER, which plans, specifications, profiles are by reference incorporated herein and made a part hereof, which sewer will serve not only land in which the Developer has an interest, but also an adjoining land areas, and;

WHEREAS, the City has received a petition from those people on Terry Lane whose properties will abut the Developer's proposed offsite sanitary sewer, for City sewers; and

WHEREAS, the City is interested in serving the properties that will abut the proposed sewer; and

WHEREAS, the cost of construction of said sewer is represented to be $14,947.50 composed of $11,727.50 for construction costs, $2,200.00 for engineering services, $500.00 for AGREEMENT fees, and $520.00 for inspection.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements hereinafter set forth, the parties hereto agree as follows:

1. CONSTRUCTION OF SEWER

The Developer shall cause said sewer to be constructed and located in accordance with said plans, specifications, and profiles, all approved by the City, under private contract to be let within sixty (60) days after requisite City approval. All work and materials shall be subject to inspection by City

and the right of City to halt construction if there shall be noncompliance therewith. Said sewer shall not be deemed permanently connected into the sewer system of City until final acceptance by City. Upon completion, said sewer shall become the property of City and City shall accept sewage therefrom, subject to such sewage service charges as may now or hereafter be regularly established by City, and all further maintenance thereafter shall be borne by City.

2. COST OF CONSTRUCTION

The Developer agrees to pay the entire cost and expense of construction of said sewer, in cash, including City engineering and inspection fees, and to hold the City harmless from any liability for claims connected therewith.

The City agrees to pay the Developer, within thirty (30) days after City acceptance, the cost of other prorate shares which is herein established at $10,823.60, and Developer shall pay the balance of the cost of said sewer.

3. AREA OF DEVELOPER

Said sewer, when accepted by the City, will serve the following described real estate:

> Part of the Northwest Quarter of the Northwest Quarter of Section 20, Township 31 North, Range 13 East, Allen County, Indiana, more particularly described as follows, to wit:
>
> Commencing at the Northeast corner of the Northwest Quarter of the Northwest Quarter of said Section 20; thence West, on and along the North line of said Northwest Quarter, 576.9 feet; thence S 00°-07' W, 523.56 feet; thence N 89°-41' W, 219.1 feet (recorded 218.5 feet); thence N 82°-00' W (deed bearing and is used as the basis of bearings for the courses in this description), 210.2 feet to the true point of beginning; thence continuing N 82°-00' W, 231.8 feet to the centerline of St. Joe Road as it presently exists; thence Southwesterly, on and along said centerline, being a 6°-46'-30" curve to the left, having a radius of 845.7 feet, an arc distance of 216.41 feet (the chord of which bears S 16°-28' W for a length of 215.82 feet) to the point of intersection with the Westerly projection of the North line of Terry Lane; thence S 89°-39' E, on and along said Westerly projected North line and said North line, 296.0 feet; thence N 01°-43' W, 176.6 feet to the true point of beginning, containing 1.191 acres of land and subject to legal right-of-way for St. Joe Road.

As the Developer will pay for the cost of construction of said sewer as it pertains to the above described area, no charge or assessment is made by this Agreement against the above described real estate for the construction of said sewer by the present or future owners of said real estate except only as to such standard tap-in, oversizing and/or interceptor area connection charges, inspection fees and monthly sewage treatment charges as are customarily charged by the City for connections to City sewer mains and treatment of sewage therefrom.

4. CHARGE AGAINST EXCESS AREA

Said sewer, when constructed, will also serve the additional or excess area as shown on attached Exhibit "A".

In the event any present or future owner of said described excess area shall at any time after the date of this contract, desire to use said sewer or any extension thereof, whether by direct tap or through the extension or connection of lateral or local lines to service such land; City, through its duly constituted authorities, before permitting such use, shall require by contract or assessment, as may be appropriate, that such owner or owners of said excess area pay to City in addition to the cost of standard tap-in, oversizing and/or interceptor area connection charges, inspection fees and monthly sewage treatment charges as are customarily charged by the City for connections to City sewer mains and treatment of sewage therefrom, the sum of $0.74688 per square foot for the area served by each connection and use, which represents the prorata share the cost of the extension of City sewer to said excess area. Exhibit "A" showing properties in excess area subject to charge for construction and use of sewer as of this date is attached.

5. AREA CONNECTION FEES (Oversizing and/or interceptor charges)

In addition to the above described "Local Connection Fees", all future users of said Sewer, whether by direct tap or connection to a lateral or extension thereof, shall pay to the City of Fort Wayne the St. Joe Interceptor Area Connection Fee of $475.00 per acre as set forth in Document #74-22909 recorded on October 1, 1974, and a Market Place of Canterbury Sewer Fee of $105.00 per acre as set forth in Document #74-13593 recorded June 17, 1974, for a total of $580.00 per acre. The amounts so collected shall be retained by the City for expansions and improvements as set forth in the aforedescribed Resolutions and deposited with the Fort Wayne Water Pollution Control Utility.

6. BOND

This contract is subject to Developer furnishing a satisfactory Performance and Guaranty Bond for the value of the sewer which shall guarantee said sewer against defects for a period of one (1) year from the date of final acceptance of said sewer by the City.

7. LIMITATION ON USE

Said sewer shall be constructed for disposal of sanitary sewage only and neither the parties hereto, their successors, or assigns, or any future owner of and land serviced by said sewer, shall at any time discharge or permit to be discharged or to flow into said sanitary sewer, any water runoff caused by natural precipitation or anything other than sanitary sewage or contamined waste.

8. WAIVER OF RIGHT TO REMONSTRATE AGAINST ANNEXATION

The Developer, for himself, his successors in title or assigns, waives and releases any and all rights which it may now or hereafter have to remonstrate against or otherwise object to, interfere with, or oppose any pending or future annexation by City of any territory now or hereafter owned by him, as described in Article 3 herein, or hereafter served by said sewer or any extension thereof, pursuant to Burns Indiana Statutes Anno. I.C. 10-2-16, 17 & 18.

In further consideration and to induce City to execute and ratify this contract, said Developer, for himself, his successors and assigns, agrees by this contract to vest in City the permanent right at its discretion to annex to the City of Fort Wayne any future time by duly authorized ordinance the said real estate described in Article 3, herein.

Developer further agrees that any deeds, contracts, or other instruments of conveyance made by the Developer, its successors or assigns transferring or conveying any interest in and to any of the real estate described in Article 3 herein, shall contain the waiver and release provisions contained in this article, which provisions shall run with the land and the acceptance of the delivery of any such instruments from the Developer, his successors and assigns by any grantee, vendee, or contract purchaser shall be made subject to the terms of this Agreement and shall constitute an acceptance of the foregoing provisions by said grantee, vendee, or contract purchaser, and their successors in title.

The Developer further agrees to record an executed copy of this contract in the Allen County Recorder's Office within ten (10) days of its adoption and approval by the Common Council of City as hereinafter provided.

Any owner or owners of land which is now, or hereafter located outside the corporate limits of City who connect into the sewer constructed hereunder shall be deemed to thereby waive his, her, their, or its right to remonstrate against or otherwise object to, interfere with or oppose any pending or future annexation by City of such land or of the territory in which it is located or of the area served by said sewer.

9. GOVERNING STATUTE

It is the intention of the parties hereto to utilize and take advantage of and apply to this Agreement the provisions of Sections 16, 17, and 18 of Chapter 128 of the Acts of 1967 of the State of Indiana (Refer to I.C. 19-2-7-16, 17 and 18), the provisions of which Sections shall govern with respect to any matters not specifically outlined herein.

10. COUNCILMANIC APPROVAL

It is understood and agreed that this contract is in all respects subject to approval by the Common Council of City, by duly adopted Ordinance, and if such Ordinance is not adopted within a period of ninety (90) days after execution thereof, this contract shall be null and void and of no further force and effect.

IN WITNESS WHEREOF, the parties have subscribed to this Agreement the day and year first above written.

DEVELOPER:

Marlin R. Jones, Partner

G. Michael Axson, Partner

STATE OF INDIANA:
SS:
COUNTY OF ALLEN:

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared MARLIN R. JONES & G. MICHAEL AXSON, who acknowledged the execution of the foregoing agreement for sewer extension, as and for their voluntary act and deed for the uses and purposes therein contained.

WITNESS my hand and notarial seal this 18th day of September, 1978.

MY COMMISSION EXPIRES:
Aug. 12, 1981

Patricia A. Warnock
Notary Public
PATRICIA A. WARNOCK

CITY OF FORT WAYNE, INDAINA

BY: Robert E. Armstrong
Robert E. Armstrong, Mayor

BOARD OF PUBLIC WORKS:

H. P. Wehrenberg, Chairman

E. H. LaMar, Member

M. G. Scott, Member

ATTEST:
Ursula Miller
Ursula Miller, Clerk

APPROVED AS TO FORM & LEGALITY:
Assistant City Attorney

STATE OF INDIANA:
SS:
COUNTY OF ALLEN:

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared ROBERT E. ARMSTRONG, ~~H. P. WEHRENBERG~~, E. H. LAMAR, and M. G. SCOTT, who acknowledged the execution of the foregoing agreement for sewer extension, as and for their voluntary act and deed for the uses and purposes therein contained.

WITNESS my hand and notarial seal this 22 day of November, 1978.

MY COMMISSION EXPIRES:
3/6/80

President Allen County

SCHEDULE OF PAYMENT

TERRY LANE - ROUSSEAU SANITARY SEWER

1. Local Sewer Cost:

Construction	$10,075.00
Inspection/Permits	520.00
Engineering	2,200.00
Agreement	500.00
TOTAL COST	$13,295.00

Pro Rata share per square foot of area served:

$$\frac{\text{total cost}}{\text{total area served}} = \frac{\$13,295.00}{178,007 \text{ Ft.}^2} = \$ .074688/\text{ft}^2$$

2. Area Assessment Costs;

$575.00/acre of tract

or $ .01320/ft^2 of tract

3. Additional Charges:

a. 6" WYE Connection
b. Tap extension plain
c. Tap extension under pavement

NAME	TRACT NO.	AREA $(ft)^2$	LOCAL COST	AREA COST	TOTAL
Robert W.&Diana L. Shambaugh	1	L. 32,600 A. 37,897	$2434.83 a. 25.00 $2459.83	500.25 500.25	$2960.08
Clarence & Alma E. Radesk	2	L. 16,533 A. 16,533	$1234.82 a. 25.00 b. 49.25 $1309.07	218.24 218.24	$1527.31
Kenneth W.& Eileen J.Smith	3	L. 16,533 A. 16,533	$1234.82 a. 25.00 b. 49.25 $1309.07	218.24 218.24	$1527.31
Clyde L. & Ella M.Hess	4	L. 16,333 A. 16,533	$1234.82 a. 25.00 b. 49.25 $1309.07	218.24 218.24	$1527.31
Vernon F. & Esther H.Daseler	5	L. 18,370 A. 18,370	$1372.02 a. 25.00 b. 49.25 $1446.27	242.49 242.49	$1688.76
Jesse H. & Mary A. Henning	6	L. 16,995 A. 16,995	$1269.32 a. 25.00 c. 394.00 $1688.32	224.34 224.34	$1912.66
Marlin R. Jones & G. Michael Axson	7	L. 43,995 A. 51,880	$3285.90 a. 50.00 c. 788.00 $4123.90	684.83 684.83	$4808.73
Daniel J.Dienelt, Robert Houser & Larry Givens	8	L. 16,448 L. 16,448 A. 16,448	$1228.47 a. 25.00 b. 49.25 $1302.72	217.12 217.12	$1519.84
TOTAL:		L. 178,007 A. 191,229	$ 13,295.00 a. 225.00 b. 246.25 c. 1,182.00 $ 14,948.25	2523.75	$17,472.00

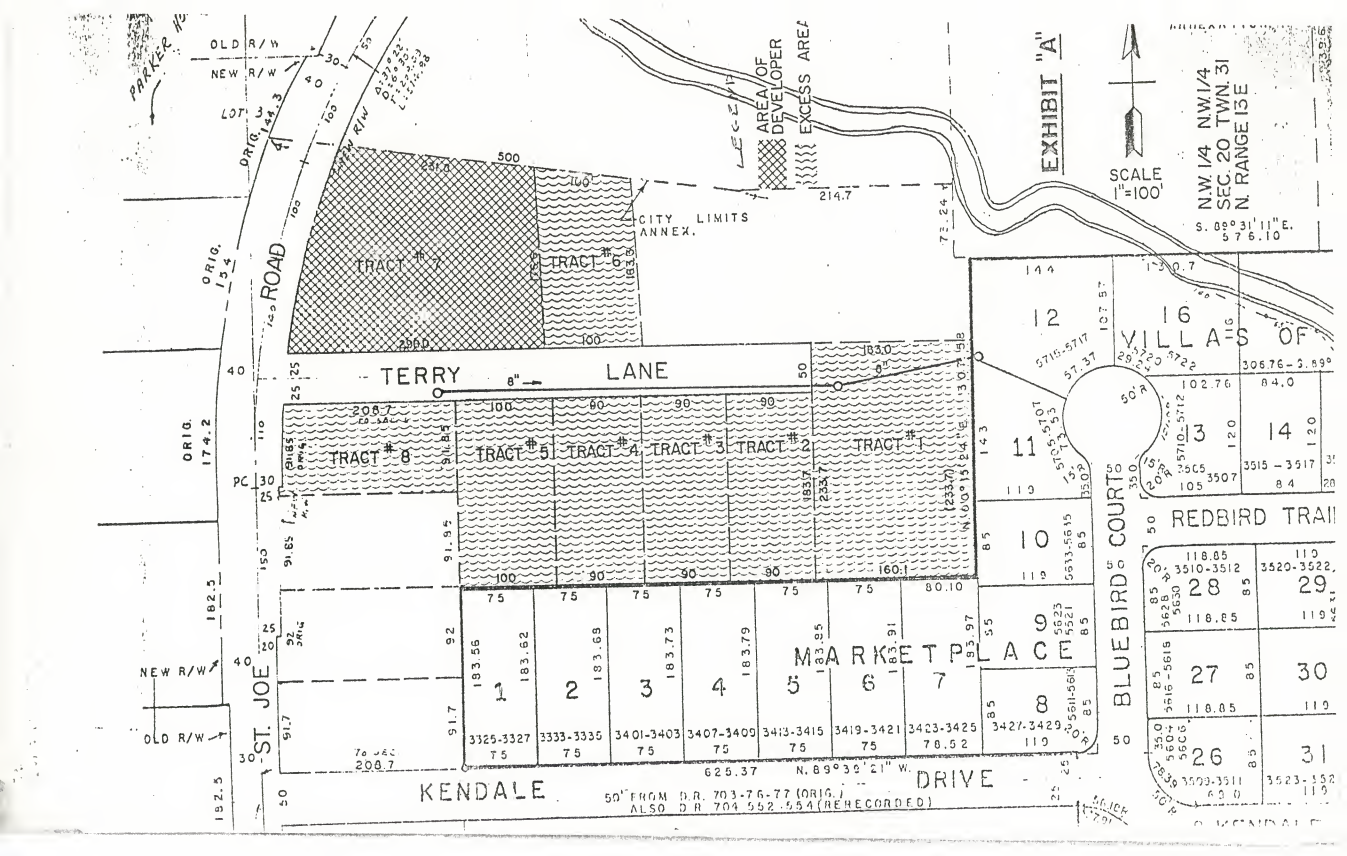
EXHIBIT "A"
SCALE 1"=100'
N.W. 1/4 N.W.1/4 SEC. 20 TWN. 31 N. RANGE 13 E
AREA OF DEVELOPER EXCESS AREA
CITY LIMITS ANNEX.
TRACT # 7
TRACT # 6
TRACT # 8
TRACT # 5
TRACT # 4
TRACT # 3
TRACT # 2
TRACT # 1
TERRY LANE
ORIG. ROAD
PARKER RD
OLD R/W
NEW R/W
ST. JOE
KENDALE DRIVE
50' FROM D.R. 703-76-77 (ORIG.) ALSO D.R. 704 552.554 (RERECORDED)
MARKETPLACE
1
2
3
4
5
6
7
8
9
10
11
12
13
14
16
VILLAS OF
BLUEBIRD COURT
REDBIRD TRAIL
27
28
29
30
31
26
S. 89°31'11"E. 576.10
N. 89°39'21" W. 625.37

4338

TITLE OF ORDINANCE SPECIAL ORDINANCE - AGREEMENT FOR SEWER EXTENSION - TERRY LANE

DEPARTMENT REQUESTING ORDINANCE BOARD OF PUBLIC WORKS

I-78-12-18

SYNOPSIS OF ORDINANCE AGREEMENT FOR SEWER EXTENSION WITH MARLIN R. JONES AND G. MICHAEL AXSON, DEVELOPERS, FOR CONSTRUCTION OF A SANITARY SEWER EXTENSION TO SERVE TERRY LANE, ST. JOE RD. AREA, BETTER KNOWN AS TERRY LAND-ROUSSEAU SANITARY SEWER.

(AGREEMENT FOR SEWER EXTENSION ATTACHED)

EFFECT OF PASSAGE SANITARY SEWER LINE TO SERVE THE ABOVE-DESCRIBED AREA

EFFECT OF NON-PASSAGE INABILITY TO CONSTRUCT SEWER EXTENSION AS PLANNED

MONEY INVOLVED (DIRECT COSTS, EXPENDITURES, SAVINGS) DEVELOPERS TO PAY ENTIRE COST AND EXPENSE OF CONSTRUCTION OF SAID SEWER.

ASSIGNED TO COMMITTEE

EP